

PROPOSED REGULATORY TEXT

(ADDITIONS ARE INDICATED BY UNDERLINE AND DELETIONS ARE INDICATED BY ~~STRIKETHROUGH~~.)

Amend 15 CCR § 2600.1 to read as follows:

§ 2600.1. Sexually Violent Predator Screening, Holds, and ~~Probable Cause Hearing~~ Board Determinations.

(a) ~~The purpose of this section is to provide a mechanism for screening parolees in revoked status and inmates under the Sexually Violent Predator Program (Welfare & Institutions Code section 6600 and following, chapter 763, statutes of 1995) where exceptional circumstances preclude an earlier evaluation and judicial determination of probable cause (Welfare & Institutions Code section 6602) prior to return to custody or release on parole.~~

(b) (a) Upon notification from the ~~Department of Corrections~~ Division of Adult Institutions, Department of Mental Health, or Board of ~~Prison Terms~~ Parole Hearings (board) staff that ~~there is some evidence to believe that~~ either an inmate or parolee in revoked status is a sexually violent predator within the meaning of Welfare and Institutions Code division 6, part 2, chapter 2, article 4, (section 6600 et seq.), may or does require a full evaluation pursuant to subdivisions (c) through (i) inclusive of Welfare and Institutions Code section 6601 to determine whether that person may be subject to commitment as a sexually violent predator, the board may order imposition of a temporary hold on the ~~inmate or parolee in revoked status~~ person for up to three (3) working days beyond their scheduled release date pending a ~~probable cause hearing~~ good cause determination by the board pursuant to section 6601.3 of the Welfare and

Institutions Code where exceptional circumstances preclude an earlier evaluation by the person pursuant to section 6601 of the Welfare and Institutions Code. The temporary hold period may be extended for a reasonable period of time to retain counsel or an interpreter, if needed, for the inmate or parolee in revoked status. Attempts to retain counsel or other assistance resulting in lengthening the temporary hold time shall be documented.

(b) Staff shall document that either inmates or parolees in revoked status subject to the temporary hold in subdivision (a) of this section either have been screened or are in the process of being screened as a person likely to be a sexually violent predator pursuant to Welfare and Institutions Code section 6601 (b). The good cause determination by the board pursuant to subdivisions (c) and (d) of this section must occur within the time period of the temporary hold.

(c) Board of Prison Terms probable cause hearings determinations pursuant to Welfare and Institutions Code section 6601.3 shall be conducted by one commissioner or one deputy commissioner. If the board finds probable cause that an inmate or parolee in revoked status is a sexually violent predator as defined in Welfare and Institutions Code, division 6, part 2, chapter 2, article 4 (section 6600 et seq.), the parolee shall be held up to a maximum of 45 days in a facility under the jurisdiction of the Department of Mental Health pending a superior court probable cause hearing pursuant to Welfare and Institutions Code section 6602. Probable cause to place a 45 day hold exists when the inmate or parolee in revoked status is found to meet all the following criteria:

(d) Good cause to place a 45-day hold pursuant to Welfare and Institutions Code section 6601.3 exists when either the inmate or parolee in revoked status is found to meet all the following criteria:

(1) Some evidence that the person committed a sexually violent offense by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person on, before, or after January 1, 1996, which resulted in a conviction or a finding of not guilty by reason of insanity of one or more felony violations of the following ~~sections of the Penal Code: Sections:~~ Sections: 261(a)(2), section 262(a)(1), section 264.1, 269, 286, 288, section 288(a) or (b), 288.5, section 289(a) or any felony violation of sections 207, 209, or 220, committed with the intent to commit a sodomy or oral copulation in violation of sections 261, 262, 264.1, 286, 288, or 288a, or 289. The preceding felony violations must be against ~~two~~ one or more victims.

If the victim of one of the felony violations listed above is a child under 14, ~~and the offense involved substantial sexual conduct (penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender)~~ then it is considered a sexually violent offense.

A prior finding of not guilty by reason of insanity for an offense described in this section subdivision (c)(1), a conviction prior to July 1, 1977 for an offense described in this section subdivision (c)(1), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another state for an offense that

includes all of the elements of an offense described in this section subdivision (c)(1), shall also be deemed to be a sexually violent offense, even if the offender did not receive a determinate sentence for that prior offense.

(2) Some evidence that the person ~~has a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others~~ is likely to engage in sexually violent predatory criminal behavior.

~~(3) Some evidence that the acts in subdivision (1) of this section were directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.~~

~~(d) The inmate or parolee in revoked status shall have the right to reasonable notice of the hearing, to attend the hearing, to present evidence, to have counsel, to have an interpreter if needed, and to receive a written statement of the decision. If the inmate or parolee in revoked status refuses to participate in the psychiatric screening or review process, the decision to place the hold shall be based on all relevant information available. If the inmate or parolee in revoked status refuses to attend the probable cause hearing conducted by the board, the hearing shall be conducted without the inmate.~~

(e) Holds imposed under this section shall start the day following the scheduled release date of the inmate or parolee in revoked status and will terminate no later than the 45th days after imposition following the scheduled release date. Holds ~~may~~ shall terminate sooner if the person is not referred to the Department of Mental Health as a result of the

screening process or upon a determination by the Department of Mental Health that the person is not a sexually violent predator or upon the superior court decisions pursuant to Welfare and Institutions Code sections 6601.5 or 6602 or upon a determination by the Department of Mental Health that the person is not a sexually violent predator.

(f) ~~Any finding made that a person is a sexually violent predator pursuant to Welfare and Institutions Code, division 6, part 2, chapter 2, article 4, section 6600 et seq., shall not toll, discharge, or otherwise affect the term of parole.~~ The parole period of any person found to be a sexually violent predator shall be tolled until that person is found no longer to be a sexually violent predator, at which time the period of parole or any remaining portion thereof shall begin to run.

Note: Authority cited: Section 12838.4 Government Code, Sections 3052 and 5076.2 Penal Code. Reference: Sections 6600, 6600.1, ~~and 6601~~, and 6001.3, Welfare and Institutions Code; and Section 3000, Penal Code.

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